UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/515,272	02/29/2000	David B. Kinder	ITL.0315US (P7998)	1987

21906 7590 09/08/2011

TROP, PRUNER & HU, P.C.
1616 S. VOSS ROAD, SUITE 750
HOUSTON, TX 77057-2631

EXAMINER	
SHELEHEDA, JAMES R	

ART UNIT	PAPER NUMBER
2424	

MAIL DATE	DELIVERY MODE
09/08/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID B. KINDER, AMANDA C. MALLARE and
SCOTT P. CASEY

Appeal 2010-011179
Application 09/515,272
Technology Center 2400

Before ROBERT E. NAPPI, JOHN A. JEFFERY, and KARL D. EASTHOM, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 12 through 16, and 19 through 21.

We affirm.

INVENTION

The invention is directed to transmitting video content with a viewer incentive image that is displayed over time. Claim12 is representative of the invention and reproduced below:

12. A computer readable medium storing instructions that, when executed by a processor-based system, enable the processor-based system to:

transmit video content;

transmit incentive image portions corresponding to complete image sections of a viewer incentive image in association with said video content, such that said complete image portions accumulate depending on viewing time;

delay display of the complete viewer incentive image by enabling said complete image sections to be displayed without displaying the complete incentive image, the extent of the incomplete image that is displayed in the form of said complete image sections being dependent on the time spent viewing video content; and

electronically pose a question in the course of transmitting the video content to determine whether the viewer is actually watching the content and only accrue the incentive when the viewer is actually watching the content.

REFERENCES

Dedrick	5,604,542	Feb. 18, 1997
Candelore	6,057,872	May 2, 2000
Brown	2001/0041330 A1	Nov. 15, 2001
Bauminger	6,681,393 B1	Jan. 20, 2004

REJECTIONS AT ISSUE

The Examiner has rejected claims 12 through 16 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Answer 3-4[1].

The Examiner has rejected claims 12 through 15, and 19 through 21 under 35 U.S.C. § 103(a) as being obvious over Dedrick in view of Candelore, and Brown. Answer 4-9.

The Examiner has rejected claim 16, under 35 U.S.C. § 103(a) as being obvious over Dedrick in view of Candelore, and Bauminger. Answer 9-10.

ISSUES

Rejection under 35 U.S.C. § 101

Appellants argue on pages 1 of the Reply Brief[2] that the Examiner's rejection under 35 U.S.C. § 101 is in error. These arguments present us with the issue did the Examiner err in determining that claims 12 through 16 are broad enough to encompass a transitory signal?

Rejections under 35 U.S.C. § 103(a)

Appellants argue on page 10 of the Appeal Brief and pages 1 and 2 of the Reply Brief that the Examiner's rejection under 35 U.S.C. § 103(a) is in error. These arguments present us with the issue did the Examiner err in finding that Brown teaches delaying presenting a complete image by displaying portions of the image over time?

---

[1] Throughout this opinion we refer to the Examiner's Answer mailed on June 6, 2010.

ANALYSIS

Rejection under 35 U.S.C. § 101

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. The Examiner has determined that the limitation of "a computer readable medium" storing instructions is broad enough to encompass a transitory signal. Answer 3. As such, the Examiner has found that the claims cover signals per se which are not statutory subject matter. Answer 3. We concur with the Examiner, since Appellants' Specification provides no definition of the computer readable media nor does representative claim 12 limit the computer readable media to non-transitory signals. Appellants' argument, on page 1 of the Reply Brief, that "air" and "a carrier wave" are not computer readable media, is not persuasive. It is well known that computer data may be transmitted and received (downloaded) via a variety of methods (e.g. R.F. signals, light signals, etc.), and when these methods are employed, data is stored in the signal which is received by the computer. Thus, we find the Examiner's claim interpretation to be reasonable and not inconsistent with Appellants' Specification. As representative claim 12 is broad enough to encompass a transitory signal, it is not drawn to statutory subject matter. *See Subject Matter Eligibility of Computer Readable Media*, 1351 *Off. Gaz. Pat. Office* 212 (Feb. 23, 2010); *see also In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter). Therefore, we sustain the Examiner's rejection of claims 12

---

[2] Throughout this opinion we refer to the Appeal Brief dated March 9, 2010 and Reply Brief dated July 27, 2010.

through 16 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Rejections under 35 U.S.C. § 103(a)

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' conclusion that the Examiner erred in finding that Brown teaches delaying presenting a complete image by displaying portions of the image over time. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusion reached by the Examiner.

Specifically, the Examiner has found that Brown's paragraph 128 and figure 12A teach that the user is periodically provided with a display, and that as the user gets more questions correct they will be presented with more puzzle pieces. Thus, the Examiner concludes that Brown teaches delaying presenting a complete image by displaying portions of the image over time. Answer 10-11. We find that there is ample evidence to support this finding by the Examiner. Appellants argue that a puzzle is displayed once and that the number of questions answered correctly determines the number of puzzle pieces displayed. Brief 10, Reply Brief 2. We disagree with Appellants' conclusion that the only way that paragraph 128 can be interpreted is that a puzzle is displayed only once. Paragraph 128 makes no mention of only displaying a puzzle once; rather it discusses the puzzle being displayed periodically as stated by the Examiner. Accordingly, Appellants have not persuaded us that the Examiner erred in finding that Brown teaches delaying presenting a complete image by displaying portions of the image over time.

As such we sustain the Examiner's rejections of claims 12 through 16, and 19 through 21 under 35 U.S.C. § 103(a).

DECISION

The decision of the Examiner to reject claims 12 through 16, and 19 through 21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

tj